

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID K. HOLLAND and
VALERIA HOLLAND,

Plaintiffs,

v.

LOANCARE, LLC.,

Defendant.

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441, 1446, and 1332, Defendant LoanCare, LLC ("LoanCare") files this Notice of Removal, removing this action to the United States District Court for the Southern District of Texas, Houston Division from the District Court of Harris County, Texas. The basis for removal is complete diversity of citizenship between the parties pursuant to 28 U.S.C. §1332.

BACKGROUND

1. Plaintiffs David K. Holland and Valeria Holland ("Plaintiffs") initiated the civil action pending in the District Court of Harris County, Texas, styled *Holland, et al., v. LoanCare, LLC*, Cause No. 2022-32578 on June 1, 2022 ("State Court Action").

2. LoanCare is the only defendant in the State Court Action.

3. In Plaintiffs' Original Petition, Plaintiffs allege LoanCare committed servicing errors regarding Plaintiffs' mortgage loan it services regarding the property located at 12902 Tamarack Bend Lane, Humble, Texas 77346 ("Property"). Plaintiffs assert claims to Quiet Title and for Declaratory Judgment seeking to declare the mortgage lien void.

REMOVAL IS TIMELY

4. This notice of removal is filed fewer than 30 days after LoanCare received the Original Petition in the State Court Action. LoanCare was served with citation in connection with the Original Petition and Jury Demand on June 17, 2022.

5. In accordance with 28 U.S.C. § 1446(a) and Local Rule LR81, LoanCare has attached the following exhibits to the Notice of Removal:

Index of Matters Being Filed:

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| Exhibit A | Index of Documents Being Filed with Notice of Removal |
| Exhibit B | Copy of the docket sheet from the State Court Action |
| Exhibit C | Plaintiffs' Original Petition |
| Exhibit D | Citation |
| Exhibit E | Roster of Attorneys |
| Exhibit F | 2021 Property Tax Statement Web Statement (printed July 15, 2022) |

REMOVAL TO THIS COURT IS PROPER

6. The Houston Division of the United States District Court for the Southern District of Texas is the appropriate court for filing a Notice of Removal from the District Court of Harris County, Texas because it is the Court for the district and division embracing the place where the State Court Action is pending. *See* 28 U.S.C. § 1441(a).

BASIS FOR REMOVAL - DIVERSITY JURISDICTION

7. This Court has original jurisdiction over the underlying State Court Action under 28 U.S.C. § 1332. This action may be removed to this Court by LoanCare pursuant to 28 U.S.C. § 1441, because there exists a complete diversity between the Plaintiffs and LoanCare, and the

matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interests and costs, based upon the allegations of the Plaintiffs' Original Petition filed in the State Court Action.

8. As required by 28 U.S.C. §1446(b), this notice of removal is timely filed within thirty (30) days "after the receipt by the [Defendants], through service or otherwise, of a copy of the initial pleading setting forth claim for relief upon which such action or proceeding is based[.]"

A. Citizenship of the Parties.

9. Plaintiffs are alleged to be Texas citizens, with a homestead in Humble, Texas. Petition ¶ 8.

10. LoanCare is a Virginia Limited Liability Company with a principal place of business in Virginia Beach, Virginia. Thus, for purposes of diversity of jurisdiction, LoanCare is a citizen of Virginia, not Texas.

C. Amount in Controversy

11. The amount in controversy in this case exceeds \$75,000.00, exclusive of costs and interest. Plaintiffs' Original Petition seeks to have "the deed of trust being declared invalid" and permanent injunction preventing an attempt to foreclosure on the Property. Petition ¶¶ 19, 23.

12. In the case of suits seeking to prevent or rescind the foreclosure of property, the Fifth Circuit has held that the amount in controversy is the value of the property that is the object of the litigation. *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013); *Martinez v. BAC Home Loans Servicing, LP*, 777 F. Supp. 2d 1039, 1047–48 (W.D. Tex. 2010).). Specifically, the value of declaratory and injunctive relief in such a context is the current appraised fair market value of the property, because "[a]bsent judicial relief, Plaintiff could be divested of all right, title and interest to the Property." *Berry v. Chase Home Fin., LLC*, No. C-09- 116, 2009 WL 2868224, at *3 (S.D. Tex. Aug. 27, 2009).

13. Here, Plaintiffs seek a judicial declaration that LoanCare's mortgage is void, seeking a permanent injunction of any foreclosure on the Property, and requesting the mortgage be removed from the title to the Property. Petition ¶¶ 19, 23; Prayer for Relief. Accordingly, the value of the Property in question determines the amount in controversy.

14. According to the Harris County Tax Assessor-Collector, the Property has a total market value of \$478,451. Attached hereto as **Exhibit F** is a true and correct copy of the 2021 Property Tax Statement Web Statement obtained by counsel for LoanCare from the website of the Harris County Assessor-Collector ("Tax Statement"). *See* <https://www.hctax.net/Property/pdf?t=print&Account=PhjRK0He/Vaaf04axPf7AF2AFjA9jHRCvR7V6ARQ/mA>

15. According to the Tax Statement, the value of the Property, \$478,451, exceeds the \$75,000 amount in controversy requirements.

OTHER MATTERS

16. As required by 28 U.S.C. §1446(a), true and correct copies of all process, pleadings, and orders that have been served or filed in the State Court Action of which LoanCare is aware, with a copy of the docket sheet, are attached as Exhibits B and C.

17. As required by 28 U.S.C. § 1446(d), LoanCare will give written notice to all counsel of record of the filing of its Notice of Removal. LoanCare will promptly file a copy of the Notice of Removal with the Clerk of the District Court, Harris County, Texas.

18. LoanCare removes the State Court Action to this Court, and requests that the Court issue any orders necessary to stay proceedings in the State Court Action, and assume jurisdiction over this action for all purposes.

Dated: July 15, 2022

Respectfully Submitted,

HOLLAND & KNIGHT LLP

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on the following counsel of record
on July 15, 2022, in accordance with the Federal Rules of Civil Procedure:

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